

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

STEELMAN PARTNERS, a Nevada limited  
liability partnership,

Plaintiff,

vs.

SANYA GAOSHENG INVESTMENT  
COMPANY, LTD., a Hong Kong corporation,

Defendants.

Case No. 2:09-cv-01016-GMN-GWF

**ORDER**

This matter is before the Court on Plaintiff's Motion to Compel and for Sanctions (#80), filed on August 24, 2015. No response has been filed, and the time to do so has passed.

Plaintiff scheduled a Fed R. Civ. P. 30(b)(6) deposition for Defendant on April 24, 2015. Defendant did not appear. Defendant did not object to the scheduling of the deposition, and did not offer any advance warning that they would not be appearing. Plaintiff now moves the Court for an order compelling Defendant to attend the 30(b)(6) deposition and to award Plaintiff costs and fees associated with this Motion and the cancelled deposition.

Fed. R. Civ. P. 37(d) allows the Court to issue sanctions to a party that fails to attend a properly notice deposition. *Great American Ins. Co. of New York v. Vegas Const. Co., Inc.*, No. 2:06-cv-00911-BES-PAL, 251 F.R.D. 534, 542 (D. Nev. 2008). The party seeking sanctions under Rule 37(d) is required to proceed with the deposition and make a record of the party's failure to appear. *Koninklike Philips Electronics N.V. v. KXD Technology, Inc.*, 2:05-cv-01532-RLH-GWF, 2007 WL 3101248 at \*18. "The severity of the sanction to be imposed, however, depends on the extent to which the failure to appear was willful or in bad faith." *Id.*, see also *Advisory Committee Notes* to Rule 37(d). In addition to any sanctions imposed, the moving party may seek attorney's fees and reasonable expenses. Fed. R. Civ. P. 37(d)(3).

1 The Defendant's failure to appear was a willful and intentional failure. Upon receipt of the  
2 Notice of Deposition (#80-3), Defendant gave his counsel specific instructions not to contact  
3 Plaintiff's counsel until the date for the deposition had passed. When Defendant's counsel finally  
4 spoke to Plaintiff's counsel, they informed Plaintiff that Defendant had no intention of appearing for  
5 the deposition and does not intend to appear for a deposition in the United States. *Motion to*  
6 *Compel*, (#80), p. 4. Sanctions are appropriate for a willful and intentional failure to appear for a  
7 properly noticed deposition. Accordingly,

8 **IT IS HEREBY ORDERED** that Plaintiff's Motion to Compel and for Sanctions (#80) is  
9 **granted** as follows:

10 1. Defendant shall appear for a deposition no later than **December 2, 2015**. The Parties shall  
11 confer on a date for the deposition.

12 2. Plaintiff is awarded its costs and attorneys' fees incurred in connection with this motion  
13 and the April 24, 2015 deposition. Plaintiff shall submit its brief in support of the amount of fees  
14 and costs by **October 16, 2015**. Should the Defendant wish to respond, they must do so no later  
15 than **November 2, 2015**. Any Reply by the Plaintiff must be submitted by **November 12, 2015**.

16 **DATED** this 2nd day of October, 2015.

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19 GEORGE FOLEY, JR.  
20 United States Magistrate Judge  
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